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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/046,404 | 01/14/2002 | Bernard M. Werner | 50047590-0059 | 2074 |

7590 03/07/2003
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EXAMINER
DABNEY, PHYLESHA LARVINIA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 2643 | |

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------------------|--------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/046,404 | WERNER, BERNARD M. |
| | Examiner Phylesha L Dabney | Art Unit 2643 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 1/14/02.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

This action is in response to the application filed on 14 January 2002 in which claims 1-10 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 9-10 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The “means for defining” the different curves critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The specification fails to teach what specific component/element is used to define the different curves. As best understood from the specification, the examiner has included claims 9-10 in the rejection below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy et al (U.S. Patent No. 2,690,231).

Regarding claim 1, Levy discloses an acoustic waveguide comprising: first and second curves (12, 14); third and fourth curves (12b, 14b); and a continuous three-dimensional least energy surface coincident with the first, second, third, and fourth curves that intersect a circular throat (11, 15) and a non-elliptical closed control curve that defines a mouth (17).

Regarding claim 2, Levy discloses the continuous three-dimensional least energy surface is free of discontinuities (see figures 1-3).

Regarding claim 3, Levy discloses the continuous three-dimensional surface further includes: a minimum surface area axial section place (near 11,15) of the continuous three-dimensional surface formed from the first, second, third, and fourth curves.

Regarding claim 4, see the rejection of claim 3.

Regarding claim 5, Levy discloses the first and second control curves (12, 14) are symmetrical about an axis.

Regarding claim 6, Levy discloses the third and fourth control curves (12b, 14b) are symmetrical about the axis.

Regarding claim 7, see the rejection of claim 1.

Regarding claim 8, see the rejection of claim 2.

Regarding claims 9-10, see the rejection of claims 7-8..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9314, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

(703) 306-0377, for customer service questions.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

PLD
[Signature]
March 4, 2003

R. Barnie
REXFORD BARNIE
PRIMARY EXAMINER
03/04/03